

DEPARTMENT OF STATE
THE LEGAL ADVISER

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MEMORANDUM

✓ March 3, 1959

TO : EUR - Mr. Merchant
FROM : L - Mr. Becker *RB*
SUBJECT: Caccia Proposals regarding Berlin

W. J. ...
This ...
1953

In the Department's telegram No. 1953 to Bonn of February 28, 1959, paragraph 7 contains certain suggestions made by British Ambassador Caccia regarding withdrawal of the Soviets from exercising functions in connection with our access to Berlin. The proposal is made that we should advise the Soviets that in handing their rights over to the DDR, the Soviets are also handing over their obligations toward the Three Powers. This would be a completely unacceptable formulation of the situation. Our basic position is that the Soviets are without any power to divest themselves of their obligations to us under the Agreement on Zones of Occupation and the Administration of Greater Berlin by transferring those obligations to the East Germans. One of the most basic legal principles is that a party to an agreement cannot transfer his obligations under that agreement to a third party without the consent of the other contracting party.

Disputed ...

Further, the proposal that the DDR guarantee to the Western Powers that the obligations of the Soviet Union under existing agreements will continue to be carried out would make it extremely difficult to avoid the conclusion that such action constituted at least de facto recognition of the DDR. In this instance, disclaimers of our intent to recognize would be of little avail, in view of the fact that we would be agreeing with the DDR on a subject of international consequence. Whether in exchange for such a guarantee we should be prepared to accept such de facto recognition is, of course, a political problem.

762.00 / 3-3-59

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L: L/GER: RD Kearney: lml
3-3-59

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Authority <u>NND 877418</u>
By <u>TKT</u> NARA, Date <u>1-5-92</u>

Copy of this memo sent to Mr. Taylor in Bonn ...
3/6/59